

IN THE FEDERAL SHARIAT COURT
(Original jurisdiction)

Present

MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SALAHUDDIN MIRZA

SHARIAT SUO MOTO NO.120 OF 1987
The Pakistan Rangers (Amendment)
Ordinance, 1985 (Ordinance No.XIII of 1985)

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| For the Federal Government | Sardar Abdul Majeed, Standing Counsel Mr. Nazar Hussain, Section Officer, Ministry of Interior. |
| For the Government of Punjab | Mr. Shafqat Munir Malik, Additional Advocate General |
| For the Government of Sindh | Mr. Fareed-ul-Hassan, Assistant Advocate General |
| For the Government of Baluchistan | Mr. M. Azam Khattak, Additional Advocate General |
| For the Government of N.W.F.P. | Mr. Muhammad Sharif Janjua, Advocate |
| For the Pakistan Rangers | Mr. Tasleem Akhtar Khan, Senior S.P. Rangers and Mr. Abdul Ghaffar, Legal Adviser, Pakistan Rangers. |
| Date of hearing | 18.11.2008 & 22.1.2009 |
| Date of decision | 06-05-2009 |

JUDGMENT:

HAZIQUL KHAIRI, CHIEF JUSTICE.- In the year 1987 the Federal Shariat Court took suo moto notice of the Pakistan Rangers (Amendment) Ordinance, 1985 (Ordinance XIII of 1985) (hereinafter called the Ordinance) with notices to the Federal and Provincial Governments and Pakistan Rangers and after hearing them vide order dated 10-4-1990 held as under:-

“Section 5 of the above law requires amendment so as to provide an opportunity of hearing of the aggrieved party. Section 20-A also requires consideration of the question why the compensation should not be allowed to a person whose property has been damaged on account of a bonafide act under the Ordinance. The question of prosecution also requires consideration particularly with reference to sections 76 to 79 PPC. Notice to the Federal Government.

2. Direction was also issued to the Federal Government to amend section 5, so as to provide an opportunity of being heard to the aggrieved party.

3. However now, pursuant to the said order dated 10-4-1990, we have to examine section 20-A of the West Pakistan Ordinance XIV of 1959 alongwith sections 76 to 79 PPC, which for the sake of convenience may be reproduced as under:-

Ordinance:

“20-A Savings:- No suit, prosecution or other legal proceedings shall lie for anything which is in good faith done or intended to be done under this Ordinance or any Rules made thereunder.”

P.P.C.

Section 76:- Act done by a person bound, or by mistake of fact believing himself bound by law. – Nothing is an offence which is done by a persons who is, or who by reason of mistake of law in good faith believes himself to be, bound by law to do it.

Section 77:- Act of Judge when acting judiciary.- Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be given to him by law.

Section 78:- Act done pursuant to the judgment or order of Court.- Nothing which is done in pursuance of, or

which is warranted by the judgment or order of, a Court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Section 79:- Act done by a person justified, or by mistake of fact believing himself justified, by law. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."

4. The Federal Government through the Attorney for Director General, Pakistan Rangers, submitted their comments

which may be summed up as under:-

"That section 20-A of the Ordinance provides that no suit, prosecution or other legal proceedings shall lie for anything which is in good faith done or intended to be done under the Ordinance and Rules made thereunder. This section ensures indemnity both to the Federal Government and the members of the force for act done or intended to be done by them in good faith under the Ordinance. The protection provided in this section can only be availed of by the member of the force in respect of bonafide act done or intended to be done. This provision further lays down that such act must be done in pursuance of the Ordinance and the Rules. An act which

falls out side the scope of authority or duty of the member of the force doing it or which is not authorized or permitted under the Ordinance can neither be said to be done in good faith or in pursuance of the Ordinance and the Rules. Thus, such acts are not protected under the provision of this section. The aim of insertion of section 20-A in the Ordinance was to provide protection to the member of the force for their genuine acts done honestly and judicially while exercising their bonafide functions under the Ordinance and the Rules. However, this section does not provide protections to the members of the force for action taken by them in bad faith or maliciously. No member or the force can avail protection of this section for action taken by him in colourble exercise of powers, that is to say, for collateral purposes not authorized by the Ordinance. In such cases the compensation can be claimed by a person whose property has been damaged. He can also launch prosecution against such member of the force even in the presence of section 20-A of the Ordinance. Any member of the force intend to seek protection of this provision of law should in the first instance prove that the act done by him was in good faith and in pursuance of the Ordinance and the Rules. That action done or intended to be done in good faith which is an intangible and abstract quality with no technical meaning or statutory definition, encompasses, among other thing, honest-belief, the absence of malice and design to defraud or to seek an unconscionable advantage must have protection under the law so that member of the force can discharge their duties smoothly and without any fear especially while combating dacoity, terrorism, menace of drugs trafficking, smuggling and assisting civil administration for maintenance of law and order situation in the country. In support of their contentions

reliance was placed on the following maxim of Islamic legal validity which excludes the responsibility of compensation:-

”الجواز الشرعي ينافي الضمان“
 مجلة الادارة الحديثة رقم (٩١)

Legal validity excludes the responsibility of compensation.

5. The word “Bona fide” occupies great significance in

Western as well as Islamic Jurisprudence. According to section

52 of PPC ‘Good faith means that nothing is said to be done or

believed in “good faith” which is done or believed without due

care and attention.” However, according to 1989 S.C.M.R.

1366, a thing shall be done in ‘good faith’ when it is in fact

done honestly, whether it is done negligently or not. In Black’s

Law Dictionary “Bona fide” means as under:-

Bona fide/bównə fáydiy/bównə fayd/. In or with good faith; honestly, openly, and sincerely; without deceit or fraud. Merrill v. Dept. of Motor Vehicles, 71 Cal.2d 907, 80 Cal.Rptr. 89, 458 P.2d 33. Truly; actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned. Bridgeport Mortgage &

Realty Corporation v. Whitlock, 128 Conn. 57, 20 A.2d 414, 416.

According to Wharton's Law Lexicon "Bona fide" implying the absence of all fraud or unfair dealing or acting, whether it consists in simulation or dissimulation.

6. What follows from the foregoing is that if a member of Rangers in discharge of his duties acts in good faith as a result whereof damage is caused to any person or property, he as well as the Government shall not be liable under law. In order to constitute an act in good faith, such act must ^{has} ~~have~~ been done judicially and honestly within the framework of law subject however to the general exceptions as envisaged in sections 76 to 79 of PPC. If it is not so, the aggrieved party has to show that in any act these elements were missing which indeed will give rise to action in law. These provisions of law are in line with the high principles of justice and equity as enunciated in Islam. With these observations, we dispose of this suo moto case.

12/1/09

JUSTICE HAZIQUL KHAIRI
Chief Justice

Fida Muhammad Khan

JUSTICE DR. FIDA MUHAMMAD KHAN

Salahuddin Mirza

JUSTICE SALAHUDDIN MIRZA

Announced on 6-5-2009

At Islamabad

M. Imran Bhatti/*

12/1/09
6/5/09

Approved on
releasing
12/1/09
6/5/09